THE CASE OF A GENTLEMAN,

Unjustly deprived of his VOTE

AT THE

ELECTION of a CHANCELLOR

OF THE

UNIVERSITY of OXFORD.

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THE ſevere Treatment I have lately received from the *Univerſity* of Oxford, for which I have always teſtified the greateſt Regard and Veneration ſo indiſpenſibly due to ſo learned and worthy a Body, obliges me to offer a few Conſiderations on that Subject to the *Publick* in general, and that *Univerſity* in particular; and I flatter myſelf with ſome Hopes that, when Party Violence has a little ſubſided, theſe Conſiderations will meet with more Attention than they could obtain during the Heats and Pre-

judices of a conteſted Election; As I am neither *capable* nor *ambitious* of acquiring the Reputation of a Writer, I ſhall give myſelf no farther Trouble about my Style than what is neceſſary to render it *intelligible* to my Readers, whom a ſhort Narrative of Matters of Fact will enable to judge more clearly of the *Merits* of the Queſtion ſubmitted to them.

In the Year 1739 I became Maſter of Arts; in 1749 I was admitted to the Freedom of the City of Oxford, *ſuddenly conferred*, *unſought*, and *unexpected*; in 1750, at the Election of Sir Roger Newdigate, I was permitted to give my Vote, *queried* indeed without any *publick* Authority, by a Chaplain of New College, of *ſingular Impertinence*; in or about 1754, when Mr. Foſter, of Wadham, was elected to a Catholick Living, I voted at that *conteſted* Election, without any Objection, *publick* or *private*; and in 1754 I received a *regular Summons* from the *proper* Officer at Oxford, requiring me to attend *Divinity Diſputations*; on which Occaſion I employed Mr. Haroſon, a Fellow of Queen's College, and paid him three Guineas for performing this *Service*; and from the Day of my *Matriculation* to the Day of

of the *late Election*, I have conſtantly and regularly paid my Fees to the *Univerſity* and *College*. The Veracity of theſe Facts cannot, I think, with any impartial Man, fall much ſhort of a *Demonſtration* of the Juſtice of my Pretenſions, to the Rights and Privileges of *the Univerſity* as a Member thereof.

The following Statutes are numerically diſtinguiſhed, that the Reader may have a more eaſy Recourſe to *each* Statute, when referred thereto.

N°. I. *De* Burgenſibus *ad Privilegia Univerſitatis admittendis.* Tit. xi. Sect. 8.

DEcretum eſt ne in poſterum liceat alicui *Burgenſium* ad privilegia Univerſitatis admitti, aut iiſdem ullo modo gaudere, niſi prius innoteſcat Vice Cancellario et Procuratoribus tunc exiſtentibus per teſtes idoneos aut aliquod publicum Inſtrumentum hujuſmodi *Burgenſem* coram Majore et Ballivis plane et clare omnibus libertatibus Villa Oxon renunciaſſe, et ſi quis in poſterum ſecus admiſſus fuerit, *ejus admiſſio irrita et nulla habeatur.*

N°. II.

N°. II. *De privilegiis Univerſitatis et Civitatis ſimul non fruendis.* Tit. xi. Sect. 9.

STatutum eſt ne quiſquam Officiarius Univerſitatis aut alius quivis libertatibus et privilegiis Univerſitatis et Civitatis ſimul gaudeat aut fruatur, et quod *cum primum innotuerit* hujus modi Officiarium aut alium aliquem libertates et privilegia Civitatis Oxon obtinuiſſe, aut *ſerio ambiiſſe* e Viſtigio Officiarius hujuſmodi Officio ſuo privetur, alius vero quivis omnibus libertatibus in perpetuum excludatur.

N°. III. *De Oenopoliis ſive tabernis Vinariis, &c. non frequentandis.* Tit. xv. Sect. 5.

STatutum eſt quod Scholares *cujus cunque* Conditionis a Diverſoriis, &c.——ac Domibus *quibus cunque* intra Civitatem——in quibus Vinum aut *quivis alius potus*——ordinarie venditur, abſtineant niſi ex cauſâ *neceſſariâ* et *urgenti* per Vice Cancellarium aut Procuratores approbanda. Quodq; ſi quis ſecus fecerit.——Pro *quarta* vice ab Univerſitate expellatur.

N°. IV. *De Ludis prohibitis.* Tit. xv. Sect. 7.

STatutum eſt quod Scholares *cujus cunque* conditionis abſtineant ab omni luſus genere, in quo de pecunia concertatur, velati a luſu talorum

rum alearum et chartarum pictarum----nec hujuſmodi publicis luſibus per ſtatuta regni prohibitis *interſint*. Item quod obſtineant----a Venatione------nec non ab omni apparatu et geſtatione Bumbardarum, &c.----Item quod Scholares---ludum pilæ pedalis----non exerceant, nec rudibus----batuant vulgo Cudgel play, aut hujuſmodi ludorum *ſpectatores* ſe præbeant---Clerici denique et ſacris Ordinibus initiati (ſi qui tales in *prædictis* deliquerint) ab Univerſitate expellantur.

Nº. V. *De Famoſis libellis cohibendis.* Tit. xv. Sect. 8.

SI quis aliquid ſcripto compoſuerit, unde *alicujus* Exiſtimatio et fama lædi poſſit, vel aliquid----*a ſe lectum vel ab alio recitante auditum* ad Vice Cancellarium *protinus* haud detulerit----banniatur.

Nº. VI. *De Oppugnatoribus et Violatoribus publicæ Auctoritatis.* Tit. xv. Sect. 14.

SI quis eò audiciæ proruperit, ut in Cancellarium Vice Cancellarium, Procuratores vel eorum *deputatos*——manus violentas injicerit, vel injicere *tentaverit*, vel *minatus* fuerit eo ipſo Univerſitatis finibus *perpetuo* expellatur.

Nº. VII.

N°. VII. *De Juriſdictione Univerſitatis tuenda.* Tit. xxi. Sect. 1.

QUoniam poteſtas cognoſcendi et terminandi omnes cauſas Scholares aliaſq; perſonas privilegiatas *quo quomodo* concernentes (exceptis cauſis liberi Tenementi, Mahemii, Feloniæ et proditionis) ad Cancellarii Univerſitatis Juriſdictionem ſpectet et pertineat: Statutum eſt quod nullus Scholaris de *quacunq; cauſa* in Univerſitate *terminabili*, quempiam in curia aliqûa extra Univerſitatem (niſi ordine appellationis ſervata) conveniat: Sed------ *modis quibus poterit*, privilegiorum Univerſitatis *hac in parte* conſervationem ſollicitè curet--- Cancellarius etiam Vice Cancellarius *omneſque alii*——ſe virtute *juramenti* Univerſitati præſtiti teneri et obligari noverint.

By my Violation of the two firſt Statutes (tranſcribed at length), ſome Gentlemen of undoubted *Worth* and *Honour* really think me, and others, more remarkable for *Subtilty*, pretend to think me *ipſo facto* expelled, or perpetually excluded: From the other five Statutes (too long to be wholly inſerted), I have made ſhort and faithful Extracts, whence I propoſe to

to deduce ſeveral Arguments, to invalidate the *real* and *pretended* Opinions of my Adverſaries.

When the Vice-Chancellor rejected my Vote, and would not hear the Reaſons I urged in my Defence, he was pleaſed to read the *two firſt Statutes*, to prove thereby, that I had forfeited my Academical Rights and Privileges by my Acceptance of the *Freedom* of *the City*; though, with due Submiſſion to his ſuperiour Judgment, it is as evident as poſſible, from the *Words*, and even from the *Title* of the *firſt Statute*, that I am not in the leaſt affected thereby, being no *Burgeſs* at the time of my Matriculation, the ſole *Object* of that Statute: It is likewiſe evident, from the *Nature* of the *Penalty*, *ejus admiſſio irrita & nulla habeatur*; which cannot be inflicted on me, without the Abſurdity of making the *Puniſhment previous*, by almoſt twenty Years, to the *Crime*.

My Violation of the ſecond Statute (if confirmed by parliamentary Authority) would, I own, render me *liable* to Expulſion, for a *ſingle* Act, *inadvertent* and *unpremeditated*, and therefore not meriting or requiring ſuch *extraordinary* Severity: The *true*, *obvious*, *and grammatical Conſtruction* of theſe Words, *in perpetuum*

excludatur, and likewiſe of *ſimilar Expreſſions* in other Statutes, is indubitably, that ſuch Offender *may* be expelled; the Statutes giving the Univerſity a *diſcretionary Power* to be exerciſed or not, according to the *Exigency* of the Caſe, rendering ſuch Rigour *neceſſary* or *unneceſſary*.

There are ſome Gentlemen who are pleaſed to *compliment* this Statute with a very different Interpretation, repugnant, I conceive, to the Principles of *Law*, *Equity*, and *Common Senſe*; which I ſhall endeavour to prove in the following Lines.

They think, or *pretend* to think, this Statute endued with a *ſilent Operation*, by which a Delinquent is *ipſo facto expelled*, without any *judicial Proceſs*: A Suppoſition diametrically oppoſite to the common Conſtruction of penal Laws. The Laws of this Realm ſuppoſe every Man *innocent*, till *convicted* of the Crime with which he is charged: They will not permit the moſt *notorious* Offender to be puniſhed, without a regular Trial, and an Opportunity of making his Defence: They admit of no Condemnation, *indicta cauſa*: The moſt *infamous Rogue*, not convicted, is ſo far from being

being liable to *Puniſhment*, that he has a *good Action* againſt another for only calling him a *Rogue:* Though a *perjured* Man is deemed in Law an *incompetent* Witneſs, yet he cannot, at a Trial, be rejected for ſuch *Incompetency*, unleſs *convicted* of *Perjury*: Nay, his Evidence muſt be admitted, unleſs a *Record* of his Conviction be produced in Court; and when a *dubious* Expreſſion occurs in an Act of Parliament, that Senſe is preferred which is moſt *favourable* to the Criminal: So widely *different* is the eſtabliſhed Practice of our Courts from this new diſcovered Doctrine.

Were the Letter of this Statute more clear and poſitive againſt me than it is, yet it does not *neceſſarily* follow that I *ought* to incur the Penalty; for frequently in other Caſes, and remarkably in the preſent, *ſummum jus ſumma injuria*, the *Intention* as well as the *Letter* ought to be attentively conſidered: For, as a noble Writer obſerves, *qui hæret in litera, hæret in cortice; & apices juris non ſunt jura.* The *equitable* Conſtruction will appear by examining the *Occaſion* and *Intention* of the Statute: It was *occaſioned* by the Feuds and Animoſities about that time *too prevalent* between the two

Bodies of the *Univerſity* and *City*, inſtigated to Acts of Cruelty and Bloodſhed by their reſpective Leaders; ſome of whom, with an honeſt but *inconſiderate* Zeal endeavouring, others with artful and *intereſted* Views *pretending*, to ſerve the Communities to which they belonged, greatly diſtreſſed and almoſt ruined both: The *Intention* of the Statute was to reſtrain the Members of the Univerſity from accepting ſuch *lucrative Employments*, in the Diſpoſal of the City, as might tempt them to prefer the Intereſt of the latter to that of the former. The Folly or Wickedneſs of theſe violent *Partiſans* was at laſt diſcovered, theſe unhappy Hoſtilities ceaſed, and, by the Interpoſition of common Friends, that ſalutary Union was eſtabliſhed which ſtill continues, to the mutual *Benefit* and *Satisfaction* of both Parties. Many worthy Members of the Univerſity, of great *Learning and Probity*, have accepted Places and *Employments* of conſiderable Value in the City, without any of the Conſequences apprehended from ſuch *Acceptance*. The *Occaſion* then of this Statute is happily removed, the *Intention* has by long Experience been found uſeleſs, and the Statute itſelf, grown obſolete, ought to be conſidered as

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abrogated by Diſuſe, and to be buried in Oblivion and *perpetual Silence:* And that this Statute has been viewed in the ſame Light in which it is now placed by a great Part of the Univerſity, is *evident* from the *late* Conduct of the Friends of a *Noble Lord*, who, precluded by the *Artifices* of his ſecret Enemies, with a Spirit peculiar to himſelf, ſacrificed his own *juſt* Pretenſions to the *Security* of his Competitor. It is farther *evident*, from the Conduct of a whole College, remarkable for their *Numbers*, *Learning*, and *Integrity*, who, in 1750, voted for Sir Edward Turner, charged with the ſame Diſqualification.

As this *rigid* Interpretation of the Statute is neither *legal* nor *equitable*, ſo likewiſe it is *irreconcileable* to *Common Senſe*; for it ſuppoſes every Delinquent, *ipſo facto*, expelled for the Violation of a Statute which he has probably never ſeen or heard of, though he often, with *Impunity*, violates other Statutes of which he cannot plead *Ignorance*, poſitively appointing the *ſame* Puniſhment of Expulſion in the ſtrongeſt and plaineſt Terms poſſible: *See* N°. III. IV. V. VI. According to this Interpretation, or rather *Miſinterpretation* and *perverted* Senſe

Senſe of the Statute, a young Gentleman may, within a Week after his *Matriculation*, be for ever expelled, without a Knowledge of, nay, without a *moral Poſſibility* of knowing, the Law by which he ſuffers: Nor indeed are other Under-graduates, or even *Batchelors*, in a more ſecure Situation; for they, in many Colleges, cannot have Acceſs to the *Body of Statutes*, in which *alone* this is to be found; and they are *reſtrained* from conſulting that Body of Statutes, in the Bodleian Library, by the following Injunction: "Decretum eſt "quod Baccalaurei & non Graduati non va- "gabuntur de loco in locum, ſed in *ea* parte "Bibliothecæ ſedulo ſtudiis ſuis incumbant in "qua libri facultatis artium (*iique ſoli*) conti- "nentur." If the *ſilent Operation*, ſo much contended for, be aſcribed to the Statute N°. II. why not, with equal Truth and Juſtice, to the *following Statutes?* Are the Words *in perpetuum excludatur* more ſtrong and explicit than the Words *ab Univerſitate expellatur*, both expreſſed in the ſame *Mood* and *Tenſe?* Nay, muſt not every diſpaſſionate Reader own, theſe Statutes will more eaſily admit a *rigid Conſtruction*, as the Puniſhment is made *poſitive* and *abſolute*, without any Condition? But a Condition is ex-

expreſſed in the ſecond Statute, which renders an *ipſo facto* Expulſion *impoſſible*; for the Puniſhment is to be inflicted at a *future* time, viz. *cum primum innotuerit*, &c.

Having endeavoured to ſhow the Illegality, Iniquity, and Abſurdity of a too *rigid* Interpretation of our Statutes, I ſhall now point out a few of the many *conſequential Miſchiefs* to which the Univerſity muſt be thereby expoſed.

By Statute N^o^. III. Gownſmen of all Denominations are prohibited from going to a Tavern, or *any other* Houſe where Wine or *any other Liquor* is ſold, without a *neceſſary* and *urgent* Occaſion, to be approved by the Vice-Chancellor, or the Proctors; and particular Puniſhments are therein appointed for the firſt, ſecond, and third Offences; but for the fourth Expulſion, *pro* quarta *vero vice ab Univerſitate expellatur*. It is too notorious to be denied, that almoſt every Member of the Univerſity is liable to Expulſion (or, in the *new Phraſe*, is abſolutely expelled) by the Violation of this Statute, in having been four times at a Tavern, *&c.* without the *Occaſion* and *Approbation* above ſpecified.

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By Statute N°. IV. Dice, Cards, Billiards, Hunting, Shooting, Hawking, Foot-ball, Cudgel-play, and *even* the *Preſence* of a Gownſman at moſt of theſe Diverſions are prohibited; and for the ſeveral Breaches of this Statute, ſeveral Penalties and Puniſhments are ordained for ſuch Offenders as are not *in Holy Orders*, but Expulſion for all *Clergymen*, who violate *any* Part of this Statute in theſe plain and expreſſive Words, "Clerici denique et "ſacris Ordinibus initiati (ſi qui tales in præ-"dictis deliquerint) *ab Univerſitate expellan-*"*tur*." By this Statute, almoſt every Clergyman of the Univerſity is, according to a *modern Interpretation*, which ſeems too prevalent, abſolutely expelled.

By Statute N°. V. if any one writes, or reads, or *hears another read* any Writing injurious to the Character of *any Perſon*, without immediately carrying the ſame to the Vice-Chancellor, he is baniſhed for *ever*; no Limitation of time being mentioned, the *Baniſhment* muſt be *perpetual*.

By Statute N°. VI. a Student, who has offered to moleſt, or barely *threatened* a Vice-Chancellor, Proctor, or *Pro-Proctor*, is doom-

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ed to *immediate* and *perpetual*, Expulſion *eo ipſo* Univerſitatis finibus *perpetuo* expellatur. Do not theſe Words *as* expreſsly, nay *more* expreſsly, point out a *Co-operation* of the *Offence* and *Puniſhment*? and are there not ſeveral of the Leading-Men in the *Univerſity*, who have, in their *younger* days, violated this very Statute? If it be denied, the Affirmative will be eaſily proved.

I might quote many other Statutes to the *ſame* Purpoſe, but *theſe* ſurely are ſufficient to ſhew, that if the Doctrine of *ipſo facto* Expulſion, and *ſilent Operation*, be admitted, the Univerſity muſt be deprived of all its Members, and conſequently loſe its very *Exiſtence*.

A *partial* and *arbitrary* Court might, indeed, explain *this*, without conſidering the Senſe of *other* Statutes; a Proceeding, not to be apprehended in a Court remarkable for its *Juſtice* and *Integrity*; but if a Sentence ſhould be given againſt me in the *Univerſity*, and ſhould be confirmed in a *ſuperior Court*; I *adjure* the *true* Friends of the *Univerſity*, to reflect *ſeriouſly* and *ſeaſonably* how fatal a Precedent this may hereafter prove, when ſome *future Miniſter*, leſs attached to its *Intereſt*, and unable

to corrupt its *Fidelity*, may, to gratify that ſpirit of Revenge, commonly excited by Diſappointments in the Breaſts of bad Men, uſe ſuch *Influence* in ſuperior Courts, and back it with ſuch *plauſible* Arguments, as may induce them to conſider, in their judicial Proceedings, the *other* Statutes endued with the ſame Kind of *Operation*, as may be *now* aſcribed to N°. II.

Having pointed out ſome of the Inconveniencies and Miſchiefs attending that *ſimilar* Conſtruction of *other* Statutes, which an *equal Diſtribution of Juſtice* renders *unavoidable*, I muſt reſume the Conſideration of *that*, which is the principal *Object* of the preſent Inquiry.

Some Gentlemen may, to ſerve their preſent Purpoſes, argue from the *Etymology* of the Word *Privilegium*, that *Privileges* are nothing more than the *private Laws* of a Community, and that none but *Citizens* can enjoy any of the *Privileges* of the City; but ſurely every unprejudiced Man muſt acknowledge, that this Word is generally uſed in a more *extenſive* Senſe, including all *Rights*, *Benefits*, and *Advantages*.

I will not trouble my Readers with the Authorities of Writers in Law and Hiſtory, which muſt

muſt frequently occur to them, but *demonſtrate* that the Word is, in our *Statute-Book*, underſtood in this *extended* Senſe. By the Title of the firſt Statute, De Burgenſibus ad *privilegia* Univerſitatis admittendis, it is plain that the *Privileges* there chiefly intended, are the *Favour*, *Employment*, and *pecuniary Advantages* gained by the matriculated Perſons, who would not otherwiſe be very fond of Matriculation: And this *extended* Senſe of the Word is farther evident from Tit. ii. Sect. 3. de tempore et Conditionibus Matriculationis, which ordains, that Students ſhall not, before Matriculation, enjoy any of the *Privileges or Benefits* of the Univerſity, Ullis Univerſitatis *Privilegiis aut Beneficiis* gaudent, clearly ſhewing, that *Privilegia* and *Beneficia* are ſynonimous Terms. If then the Word *Privilegia* includes, as it moſt certainly does, any *beneficial Intereſts*, why are not all theſe Gentlemen, who enjoy, or have enjoyed *lucrative Employments* of conſiderable Value, beſtowed on them by the *Corporation of Oxford*, as much within the *Letter* of the Statute as myſelf, and particularly thoſe who now are, or ever have been, *Lecturers of Carfax*, Privilegiis Univerſitatis et Civitatis ſimul gaudentes?

Theſe Gentlemen are as much within the *Letter*, and much more within the *Intention* of the Statute, which is indiſputably to reſtrain Gownſmen from an Acceptance of ſuch City-favours, as may *ſeduce* them from their Duty to the Univerſity. Several of the *Carfax Lecturers*, have been in ſuch indifferent Circumſtances at the time they *accepted* their Lectureſhips, that the Revenue thereof, amounting to about twelve Pounds, was no deſpicable Part of their *Maintenance*, and therefore much more likely to *influence* their Conduct, than the Freedom of the City is to *influence* that of an *honorary Freeman*, who never enjoys what *he thinks* any Advantage, except that of *voting* for his Friend at an *Election*; yet many of theſe Lecturers are Members and Ornaments of the *Univerſity*, and will, I hope, long continue ſuch.

The Author of ſome late Obſervations, is a ſtrenuous *Advocate* for the *ſilent Operation* of the Statute of *ſimul Fruition*, as he is pleaſed to intitle it; and yet has, I fear, *himſelf* violated this very Statute, by his Application to ſeveral *Citizens of Oxford*, for an *Employment* of great Value, particularly by his Letters to Lord

Lord *Wenman* and Sir *James Daſhwood*, who are both *Citizens*, and whoſe *Votes and Intereſt* muſt have greatly aſſiſted his Pretenſions to the Employment here meant, viz. the *Regiſterſhip of the County*; non obtinuit ſed *ſerio ambiit*. It is true, indeed, that this Office cannot be in the *ſole* Diſpoſal of the City; and it is equally true, that the Votes and Intereſt of the *honorary* and *other Freemen*, muſt have ſo much Weight in the Diſpoſal thereof, that the Candidate ſupported by them muſt have a fair Chance of Succeſs; and though diſappointed in his Scheme, would be thought guilty of the higheſt *Ingratitude*, if he did not retain a due and *permanent* Senſe of ſo *great* an Obligation: how far his Gratitude might, or ought to influence his Conduct, I will not pretend to dedetermine; but every reaſonable Perſon muſt acknowledge, that a Man of *ſmall Fortune*, under *ſuch* Obligations, is more expoſed to Temptation, than a Man of a large independent Fortune, who has never received any Favour from the *City* but the *Freedom* thereof, and that *unſollicited* before, and *unexerciſed* ſince it was conferred: By an *impartial Adminiſtration of Juſtice*, this Gentleman muſt be as much in *perpetuum excluſus* as myſelf.

——neque lex eſt juſtior ulla
Quam necis Artifices arte perire ſua.

The ſame Author (if I miſtake not the Perſon) in ſtating the Inconſiſtencies of the Oaths taken by *Academics* and *Citizens*, has *unluckily* quoted a Statute, which, *for his Sake*, I could wiſh he had overlooked: I mean N°. VII. de Juriſdictione Univerſitatis tuenda, to the due Obſervation of which, he is not only bound by his *Matriculation-Oath*, ad Obſervandum omnia Statuta, but more particularly by the *Concluſion* of this Statute in theſe Words; Cancellarius etiam et Vice Cancellarius *omneſq; alii* ——ſe *virtute Juramenti*----teneri et Obligari noverint; and the Explication of an Oath in our ſmall Statute-Book, p. 199, clearly evinces the *Juramental Obligation* of this Statute; intenditur igitur *perjurio ſe obligare* delinquentes contra Statuta *ſub pœnâ perjurii ſancita:* So that a Delinquent againſt this Statute is deprived of all Excuſe and Subterfuge, the common one, *ſolutâ pœnâ ſolvitur conſcientia*, cannot be alledged in his Vindication. By this Statute, all Members of the Univerſity are obliged to try *all* Cauſes (except of Freehold Mayhem, Felony, and Treaſon) in the *Univerſity-*

verſity-Court, and by all *poſſible Means*, carefully to preſerve the Privileges of the Univerſity in *this Particular*; but how contrary to this Statute, how inconſiſtent with his Oath has his *late* Conduct proved? In which he has been ſo far from uſing all *poſſible Means to preſerve* the Juriſdiction of the Univerſity, that he has openly declared himſelf a Subverter of it, by threatening his Antagoniſt with a Proſecution in a *ſuperior Court*, though the Cauſe being neither of the four Cauſes above ſpecified, was undoubtedly *determinable in the Univerſity*; and this Gentleman, not contented with theſe Threats, which *alone* muſt be deemed a Violation of the Statute, actually gave Orders for carrying on this Proſecution in *the Court of King's-Bench*, *Ordine Appellationis non ſervato*, and was very angry with his Friends, for *prudently* diſobeying ſuch *imprudent* Orders. This *Tranſaction* is of ſo *late* a Date, and ſo *notorious*, that every Academic may well admire his *Aſſurance* in the Citation, of a Statute ſo groſsly *violated* by himſelf. Though this dictatorial Gentleman is pleaſed to *aſſert*, that a bare *Acceptance* of a *ſecond* untenable Benefice, will vacate a *former*; yet I doubt not that he will, upon mature Conſideration, acknowledge that this *Aſſertion* is not

not *Law*, and that *Acceptance alone* does not *vacate*; and that even *Admiſſion* and *Inſtitution do not make the firſt Cure void without Induction*: If he heſitates, let him conſult Mr. *Viner*, under the Title of *Preſentation*, l. b. 3. Nor would *that* Caſe, if *properly* ſtated, be parallel to the *preſent*; for that is ſupported by *Act of Parliament*, and an *Adjudication* thereon; the *preſent* by neither.

As the ſame Writer has argued a good deal on the *Inconſiſtency* of the *Oaths*, and the *Incompatability* of the two *Franchiſes* of the *Univerſity* and *City*, I find myſelf obliged to ſay ſomething on that Head. The *Multiplicity* and *Contrariety* of the *Oaths* taken in all Branches of Buſineſs, and particularly in *Courts* of *Law*, and the *publick Offices of the Exciſe*, *Cuſtoms*, &c. are Grievances greatly complained of, and I wiſh our *Alma Mater* had no ſuch Occaſion of Complaint. Men too frequently ſwear to the Truth of what they cannot *certainly* know, and to the Performance of things without a *moral Poſſibility* of performing them *ſtrictly and literally*. Every *matriculated* Perſon ſwears to obſerve all the *Statutes*, *Privileges*, *and Cuſtoms of the Univerſity*; though Scho-

Scholars, at the time of their Admiſſion, generally know very little of the *common Statute-Book*, and cannot know the Contents of the *Body of Statutes*; and *common Tradeſmen* cannot even read the Language in which the Statutes are written: Both are therefore equally *incapable* of a *literal* Performance of their Oaths. But the moſt *ſevere* Commentator on the Statutes has, I hope, *Charity* enough to acquit all ſuch of the high *Crime of Perjury*, as are always ready to do every *lawful* and *reaſonable* Act they can for the Service of the *Univerſity*; and all *ſuch* Acts may be conſiſtently performed by one who enjoys both Franchiſes at the ſame time. Each Community may have *unjuſt* and *contradictory Claims and Pretenſions*; but an abſolute *Right* muſt be in *One:* Where the Property of this *begins*, the Property of that muſt *end*; and a common Friend is much more likely to promote the *true Intereſt* of the *Univerſity*, by an amicable Determination of ſuch Diſputes as may ariſe between the two Communities, than a *violent Champion*, who thinks the *Deſtruction* of one neceſſary to the *Preſervation* of the other. A *Citizen*, as our Author obſerves, ſwears to maintain the *Franchiſes*, *Liberties*, and *Cuſtoms* of the City; all which

can amount to no more than its *legal and reaſonable Rights*; for an *illegal Contract* is *void*, and a Cuſtom againſt Reaſon is no *Cuſtom*, in a *legal* Senſe: *Malus uſus eſt abolendus*, &c. *See Coke on Littleton*, p. 141. An Academic may therefore, *conſiſtently* with his Duty to the *Univerſity*, maintain the *Rights* of the *City*, which cannot be inconſiſtent with the *Rights* of the *Univerſity*, whatever their reſpective *Pretenſions* may be.

The *Citizen* ſwears to be obedient and ready to the Mayor, Aldermen, *&c.* and to their *lawful Commandments*. This Obedience is not repugnant to the Duty an Academic owes the Univerſity; for if he receives any Commandment *injurious* to the Univerſity, it is not *lawful*, and therefore not to be *obeyed*. Though an Academic muſt not, in his *Academical Capacity*, contribute to the Watches, Taxes, *&c.* paid by the *City*, leſt he ſhould thereby ſubject the *Univerſity* to theſe Charges; yet he may as a *Citizen* contribute, without any danger of ſubjecting the *Univerſity* to ſuch Demands.

The *Citizen* ſwears, that he will implead no Perſon of the Franchiſes and Guild of the City

City out of its Court, *if that he may have Right within this Court.* An *Academic*, admitted to the Freedom of the City, is not reſtrained hereby to *their* Court, becauſe *that he cannot have Right within their Court*; for all Cauſes, wherein an *Academic* is a Party, are cognizable in the Univerſity Court *only*, to which ſuch Juriſdiction is given by the *uncontrovertible* Authority of an Act of Parliament.

Thus have I endeavoured to ſhew, that the two Franchiſes are not *incompatible*; with what Succeſs, my Readers muſt determine: But whatever Difficulties a *common Citizen, matriculated*, might find in the Diſcharge of his Duties, an *honorary Freeman* finds none; no Duty or Payment whatſoever being, I believe, required at his Hands. However, I can conſcientiouſly declare, in *my* Vindication, that I have, ſince my Acceptance of the Freedom of Oxford, been ſo far from doing any thing, in conſequence thereof, *prejudicial* to the *Univerſity*, that I cannot recollect any *one Act, Matter*, or *Thing* whatſoever, done by me *as a Citizen:* And if any Duty *inconſiſtent* with that I owe the Univerſity, ſhould, contrary to *paſt* Practice and *future Probability*, be required of me, a *Diſfranchiſement* would, in that Caſe,

free me from any Obligation to the City, as no *Obligation* could ſurvive my *Membership*.

By the *plain* and *obvious* Conſtruction of our Statutes, which I have all along contended for, the *Univerſity* is poſſeſſed of a *diſcretionary Power*, without the *diſagreeable Neceſſity* of exerciſing it, and all the Dangers and Difficulties attending an oppoſite *Explication* are removed: But if they think themſelves under an *indiſpenſible* Neceſſity of executing one Statute, how can the Execution of the other Statutes be *diſpenſed* with? eſpecially when that *one* is *not*, and moſt of the *others are*, confirmed by *Parliament*. It is evident, the Univerſity have thought a *parliamentary Confirmation* neceſſary to eſtabliſh the Validity of their Statutes, by their *Application* to Parliament in the Reign of King William for that Purpoſe; and from the Inefficacy of ſuch their Application, it is *as* evident, that the *Parliament* did not approve the *Caroline Statutes:* Theſe Statutes then are no more than the *Bye-Laws* and *Ordinances* of any *other* Community, which, if repugnant to the Laws and Statutes of the Kingdom (as theſe are under the *new* Conſtruction), *are void and of no Effect: The King's*

Charter

Charter alone cannot uphold them. See *Wood's Inſtitutes*, p. 112.

By a Charter granted the Univerſity, in 14 H. VIII. to impriſon for Incontinency, they attempted to exerciſe that Power; but finding the Authority of their Charter *inſufficient*, they applied to *Parliament*; and were by an Act, paſſed in the 32d Year of the ſame Reign, qualified for the legal Exerciſe of that Power. In the 13th of Eliz. they obtained a Confirmation from the Queen by Act of Parliament, by which their Charters were confirmed, *the Proceedings before by their Charters being againſt the Laws of the Land.* See *Viner*, under Title *Univerſity*.

In the ſame Author, and under Title *Corporation*, (M) p. 296, my Readers may find an Authority, not relative to the preſent Queſtion, but clearly and poſitively contrary to the Opinion, or rather *Inclination* of Opinion, of two very great and very good Men, whoſe Merits do no ſmall Honour to their Profeſſion. In a Caſe lately publiſhed, with their Opinion thereon, they allow, that in *parliamentary Proceedings*, if a diſqualified Member be elected, his

his *Competitor* ſhall not on Proof thereof be admitted; but that a *new Election* is *neceſſary*: Yet *they do not know that this is the Rule or Law of Election, in other Caſes, in Corporations.* Mr. Viner ſays, *verbatim*, "At an Election of Mayor, an *unqualified* Perſon has the moſt Votes; afterwards they proceed to a *new Election*, and a *third* Perſon who is qualified has the Majority; this *third* Perſon is the Mayor *duly elected*, and not he that had the moſt Votes next to the unqualified Perſon." And this he cites as an adjudged Caſe in the Affair of Bedford, 7 Geo. I. From whence I conclude, that theſe Gentlemen had not ſufficient time allowed them for the *full Conſideration* of the Caſe before them.

And it is far from improbable, that if the ſaid Caſe had been *fairly*, and *fully* ſtated, with a Recital of *all* the Statutes I have mentioned, and an Acknowledgment that the *two* firſt have no *Parliamentary Sanction*, they would have eſtabliſhed the *Eligibility* in queſtion, by a *clear*, and *poſitive* Opinion, and which would have *conſequentially* eſtabliſhed my Right.

Being entirely free from any *perſonal* Reſentment againſt the *Vice-Chancellor*, or any *other*

other Member of the Univerſity; I cannot but with the utmoſt Reluctance, think of the Neceſſity of my Application to a *ſuperior Court*. I therefore demand no *Satisfaction* for *paſt Injuries*; but earneſtly intreat the *Governors*, and *other* Members of that learned Body, *ſeriouſly* to conſider the Caſe before them, and the *Conſequences* that may attend it. Their Wiſdom muſt eaſily ſuggeſt ſome happy Expedients, which may ſecure me in the *future Exerciſe* of my academical Rights, and the Univerſity in the quiet Enjoyment of *Peace*, and *Proſperity*.

FINIS.

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